

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 314 of 1992

in

SPECIAL CIVIL APPLICATION No 2965 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

LIKHI GROUP GRAM PANCHAYAT

Versus

STATE OF GUJARAT

Appearance:

MRS KETTY A MEHTA for Appellants
Mr. S.T.Mehta AGP for Respondent No. 1
MR BP TANNA for Respondent No. 2
NOTICE SERVED for Respondent No. 3, 4

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 02/12/1999

#. This is an appeal under clause 15 of the Letters Patent against the judgment and order passed by the learned Single Judge dismissing the Special Civil Application No. 2965 of 1992 .

#. The facts leading to the aforesaid Letters Patent Appeal are as under:

Original Special Civil Application was filed by Likhi Group Gram Panchayat through its Sarpanch as well as by one Shri Prithuvisinh Gulabsinh as power of attorney holder of (i) Shri Jagatsinh Gulabsinh, (ii) Shri Rajsinh Nathusinh and (iii) Shri Daulatsinh Pravatsinh. It was the case of the original petitioners in SCA No.2965 of 1992 that petitioner no.1 and other members of the Gram Panchayat were duly elected under the provisions of Gujarat Panchayat Act 1961 (hereinafter referred to as the said Act) and were entitled. They continue to hold the post on which they were elected for a period of 5 years from the date of their election under the provision of section 17 of the said Act.

So far as the petitioner no.2 is concerned, he represents the residents of village which is included in Likhi Group Gram Panchayat. The local area of Likhi Group Gram Panchayat consisted of (1) Likhi, (2) Chhapara (3) Surpur, (4) Dolapur. (5) Bhandardi and (6) Khandhol. Because of construction of Guhai Dam, the whole gamtal of villages Likhi and Bhandardi were likely to be submerged. Therefore, the District Development Officer, on the basis of report of Taluka Development Officer proposed to the Development Commissioner to divide local area of (1) Bhandardi and (2) Khandhol and to form three different Gram Panchayats as suggested therein. Certain residents of villages Likhi and Bhadardi made a representation to the Development Commissioner stating that till the rehabilitation of the residents of the villages was not over the formation of new Gram Panchayats should be postponed. Though, the Taluka Panchayat as well as the District Panchayat recommended for division of local area of Bhadardi and Khandhol as well as formation of (1) Likhi Group Gram Panchayat (2) Bhadardi Gram Panchayat and (3) Khandhol Gram Panchayat the Likhi Group Gram Panchayat passed a Resolution opposing the move to form new gram panchayats. Initially the Development Commissioner by his letter dated 3.4.1991 addressed to the DDO, Sabarkantha District, Himatnagar held that since the prescribed ceiling regarding land revenue was not

satisfied the proposal for bifurcation of Likhi Group Gram Panchayat was rejected. Said letter of the Development Commissioner addressed to the District Development Officer is at Annexure. A to the SCA.

After lapse of some time, the Development Commissioner issued Notification under section 9(2) of the said Act. Aforesaid Notification is at Annexure. C to the SCA.

Relevant portion of the aforesaid Notification reads under:

No.KPV/16/DVN/P.1. In exercise of the powers of the State Government under section 9(2) of the Gujarat Panchayat Act 1961 delegated to him under Government Notification, Agricultural and Rural Development Department No.PRN-23-63-G, dated 13th June 1963 read with Government Notification, Rural Development Department No.9. KP-53-PRN-41-64-J, dated the 5th May 1964, the Development Commissioner, Gujarat State, after consultation with the Gram Panchayat mentioned in column 3 of the Schedule attached herewith Taluka Panchayat Himatnagar and the District Panchayat Sabarkantha hereby declares that the local areas shown in column 6 shall be divided from grams shown in column 3 of the Schedule attached herewith and after division of this area the new grams formed shall be known as Grams named in column 7 having local area as shown in column 8 of the said Schedule.

This Notification will in effect from the date of its publication in Government Gazette.

As per the Schedule issued along with the said Notification, the local areas of (1) Bhadardi and Khandhol are divided and three new gram panchayats viz. 1. Likhi Group Gram Panchayat 2. Bhadardi Gram Panchayat 3. Khandhol Gram Panchayat are formed

As a consequence of the aforesaid Notification, further order was passed at Annexure D to the SCA dated 13.3.1992 by which a Talati-cum-Mantri was appointed as Administrator to take charge of Likhi Group Gram Panchayat, Bhadardi Gram Panchayat and Khandhol Gram Panchayat to function and discharge the duties under the said Act till reformation of the Panchayat mentioned in

column no.7 of the Schedule under the said Act. The appellants herein who are the original petitioners challenged the said the Notification as well as the order appointing the administrator by way of filing SCA No.2965 of 1992 . The learned Single Judge after considering the affidavit in reply filed by the DDO as well as after considering the arguments of both the sides dismissed the said SCA by his judgment dated 28.7.92. Being aggrieved by the said judgment of the learned Single Judge, the appellants-petitioners have filed the present LPA.

#. Mrs.Mehta learned advocate for the appellants has challenged the decision of the State Government in dividing the aforesaid Likhi Group Gram Panchayat as well as appointing the administrator. Firstly it was contended by Mrs.Mehta that in the instant case, there is alteration in limits of Likhi Group Gram Panchayat by inclusion of certain area therein and by exclusion of certain area therefrom and therefore, in view of the provisions of section 298, administrator would not have been appointed. In our view there is no merit in the contention.

Relevant part of section 298 reads as under:

298.Consequences of alteration of limits of gram or nagar. (1) When by a notification under sub-section (2) of section 9 the limits of any gram or nagar are altered so as to

(a) include any area therein

(b) exclude any area therefrom

the State Government may, notwithstanding anything contained in this Act or any other law for the time being in force, by order published in the Official Gazette, provide for all or any of the following matters namely:-

(i) in a case falling under clause(a) the interim increase in the number of members of the gram Panchayat or, as the case may be nagar Panchayat by appointment of additional members by the State Government;

(ii) in case falling under clause(b) the removal of the members of the gram Panchayat or, as the case may be, nagar Panchayat, who in the opinion of the State Government represent the area

excluded from the gram or, nagar as the case may be, nagar...."

Relying upon the aforesaid provisions it is argued that when as per clause (b) of the said section certain area is excluded from the village Likhi Group Gram Panchayat, there is no question of appointment of an Administrator and therefore, the order of appointment of Administrator is bad in law and contrary to the provisions of section 298 of the said Act. It is submitted that appointment of Administrator by exercising the powers under section 310 of the said Act is bad in law as said provision is not applicable at all. In this connection a reference is required to be made to section 310 of the said Act, which reads as under:

"310. Effect of conversion of gram into nagar: division of gram etc.(1)

Where by virtue of a notification issued under sub-section (2) of section 9, any gram ceases to be a gram or any nagar ceases to be a nagar, and

(i) the local area comprised in nagar is declared to be gram or split up into two or more grams or into a nagar and a gram with effect from the date on which the local area is so declared or split up (hereinafter referred to as "the said date") the following consequences shall ensue, that is to say-

(a) the Panchayat constituted in respect of such local area shall stand dissolved and all the members of the Panchayat shall vacate the office

(b) until for the nagar or as the case may be the respective new gram, a nagar Panchayat or as the case may be a gram Panchayat is constituted, the State Government shall appoint an administrator or administrators to exercise the powers and perform the functions of the respective Panchayat of the nagar or, as the case may be, new gram;

(c) the members elected by the Panchayat dissolved under clause (a) (hereinafter referred as "the dissolved Panchayat") to a Nyaya Panchayat functioning in the local area shall cease to be members of the Nyaya Panchayat and until the respective Panchayat is constituted as aforesaid, the State Government shall-

- (i) in the case of a new gram, appoint from amongst persons qualified under section 214 a person to be member of the Nyaya Panchayat of the group in which such gram has been included; and
- (ii) in the case of the nagar, appoint from amongst persons qualified under section 214 members of the Nagar Nyaya Panchayat of the Nagar and a standing member of the conciliation panch of the nagar.
- (d) the Gram Nyaya Panchayat affected by the dissolution of a Panchayat under section 9 shall continue to function in the area of the group of grams which continue within its jurisdiction after the exclusion of any area therefrom under section 9 unless the number of grams included in the group is rendered less than three;
- (e) the unexpended balance of the gram fund or, as the case may be nagar fund and all properties including arrears of rates, taxes and fees belonging to the dissolved Panchayat shall, subject to all charges and liabilities affecting the same, vest in such proportion and in such manner as the State Government may direct in the respective Panchayat of the nagar or new gram.

Provided that until respective Panchayat for the nagar or new gram is constituted and it holds its first meeting under sub-section (1) of section 44, the unexpended balance of the fund and other properties vesting in the Panchayat shall be held by the administrator of the nagar or as the case may be, new gram and shall be utilised by him for the benefit of the inhabitants of the nagar or one gram in such manner as he may think fit.

- (f) any appointment, notification, notice, tax rent, cess, order, scheme, licence, permission rule, by law or form, made, issued imposed or granted in respect of the area within the jurisdiction of the dissolved Panchayat and in force on the said date shall continue in force and be deemed to have been made, issued imposed or granted in respect of the nagar or new gram formed out of the said area until it is superseded or modified by any appointment, notification, notice, tax fee, cess, order scheme, licence permission, rule bye law or form made issued imposed or granted under the law

applicable thereto;

(g) all budget estimates assessment, assessment list, valuations or measurements made or authenticated by the dissolved Panchayat immediately before the said date shall in so far as they relate to the nagar or, as the case may be, new gram, be deemed to have been made or authenticated in respect of the nagar or new gram;

(h) all debts and obligations incurred and all contracts made by or on behalf of the dissolved Panchayat immediately before the said date and subsisting on the said date shall in so far as they relate to the nagar or any new gram formed in the area within the jurisdiction of the dissolved Panchayat be the debts and obligations incurred by and the contracts made by the Panchayat of the nagar or, as the case may be, new gram;

i) all officers and servants in the employ of the dissolved Panchayat immediately before the said date shall be allocated to the Panchayat of the nagar or as the case may be, new be, new gram or new grams by the State Government in such manner as it may direct and until other provision is made in accordance with this Act, they shall receive salaries and allowances and be subject to the conditions of service to which they were entitled or subject on the said date;

(j) all proceedings (including appeals) pending at the said date before the dissolved panchayat shall be deemed to be transferred to and continued by the Panchayat of the nagar or one gram before which they would have been instituted had the nagar or one gram been formed when the proceedings were instituted.

Provided that until the Panchayat for the nagar or one gram is constituted the administrator appointed for the nagar or as the case may be, new gram may deal with such proceedings and dispose them of;

(k) all prosecutions instituted by or on behalf of and all suits or other legal proceedings

instituted by or against the dissolved Panchayat or any officer thereof and pending at the said date shall be continued by or against the Panchayat of the nagar or new gram by, on behalf of or against which they would have been instituted had the nagar or one gram been formed when the prosecutions, suits or legal proceedings were instituted and until such Panchayat is constituted, shall be continued by or against the administrator appointed for the nagar, or as the case may be, new gram.

- (2) Within one year of the said date, the Panchayat for the respective nagar or as the case may be, new gram shall be constituted in accordance with the provisions of this Act."

#. A bear look to the Notification at Annexure-C makes it clear that the local area shown in column 6 of the schedule attached to the Notification is divided from the area shown in column 4 of the Schedule and after the division, the new panchayats named in column no.7 having the local area as shown in column no.8 of the said schedule are formed. Accordingly as per the said Notification Likhi Group Gram Panchayat has lost its originality completely and in fact three new gram panchayats have come into existence viz. Likhi Group Gram Panchayat , Bhadardi Gram Panchayat and Khandhol Gram Panchayat and even the area is also mentioned which comprises of new gram Panchayats. Therefore, in our opinion there is complete splittingthe areas comprising the original Likhi Group Gram Panchayat and three different gram panchayats have come into existence. The effect of such division has been provided under section 310 of the said Act and as per the said provision, Panchayat constituted in respect of such local area stand dissolved and all the members of the Panchayat vacate office and therefore, in the instant case when the original Likhi Group Gram Panchayat has already been split into three new gram panchayats, the natural consequential effect of the same would be to appoint an Administrator as envisaged by section 310 of the Act. The submission of the learned advocate for the appellant with reference to section 298 of the said Act has absolutely no force at all. So far as section 298 of the said Act is concerned, it applies when some area of a particular gram Panchayat or nagar panchayat as the case may be is altered either by exclusion or inclusion from the said gram Panchayat or nagar Panchayat and in that case the provisions of section 298 of the said Act are

required to be followed and in such a case there would not be any question of appointment of an Administrator. Said provision will apply when area of an existing gram panchayat is altered and is included in another existing gram panchayat because there will be inclusion and exclusion from the area of gram panchayats. In such a situation the natural consequences provided under section 298 will follow. However, this is not the case here. The instant case is not covered by section 298 of the said Act as pointed above. Here the original Likhi Group Group Gram Panchayat is split and 3 separate new gram panchayats have come into existence with the area prescribed in the said Notification and therefore, as per section 310 of the said Act appointment of an Administrator has been made. This is absolutely in consonance with the provisions of the said Act and argument of the learned advocate for the appellant has no merit. The same is required to be rejected.

#. It was further submitted by Mrs. Mehta for the appellants that the original Notification suffers from the vice of malafide because once the Development Commissioner had initially not approved the proposal subsequently, without any basis or valid reasons within a short time, he could not have approved the division and formation of new panchayats. So far as the allegation about malafide is concerned, averments had been made in para 8 of the original SCA. Said para 8 reads as under:

"The petitioners say that the action of dividing the Likhi Group Group Panchayat into 3 Panchayat is also malafide in law, inasmuch as the Sarpanch and the members of the Gram Panchayat who are looking after the interest of the villagers, who were completely uprooted because of the Guhi dam and because they were helped by the Sarpanch and members of Likhi Group Group Gram Panchayat in getting their legitimate right from the Government the impugned action is taken with a view to remove them by illegal methods and by circumventing the provisions of law. The petitioners therefore, say that the Notification Annexure-C to the petition and subsequent order Annexure.D to the petition is illegal, ultravires and bad in law."

Reading the aforesaid averments made in para 8 of the petition it can hardly be said that there is any basis for such assertion or allegation about malafide action. There is hardly any pleading about malafides in the said para. The Development Commissioner has also filed

affidavit in reply which is at page 32 of the compilation wherein he has pointed out that the Notification in question was issued for safeguarding the interest of the people and the said decision was taken in good faith and in public interest. It has been pointed out in the affidavit in reply that in view of distance problem which has occurred due to the water of the dam, the bifurcation become imminent and he has also annexed a sketch along with his reply to substantiate his plea of bonafide exercise of power. As stated above, nothing has been shown as to how the aforesaid decision is in any way malafide or against the interest of public.

#. It was next argued by Mrs. Mehta that once the Development Commissioner had turned down the proposal for such division/bifurcation, he was required to follow the procedure of fresh consultation with Gram Panchayat, Taluka Panchayat as well as with the District Panchayat and as no such consultation had taken place the Notification should be quashed. The Resolution passed by the Taluka Panchayat and District Panchayat regarding the proposal for bifurcation is annexed at page 36 of the SCA. This Resolution would show that there was no malafide on the part of the Development Commissioner in issuing the Notification in question. It may be stated that consultation required had already taken place earlier. Therefore, after considering all the materials on record, if ultimately the Development Commissioner has issued a Notification it cannot be said that within such a short period further consultation was required to be made. So far as the question of consultation is concerned as laid down in the decision reported in 6 GLR 451 in the case of Kalubhai Kesrisingh Mahida vs. State of Gujarat & ors that such procedure is directory and not mandatory. In this decision it has been further observed as under:

"..a duty to consult the Panchayat before passing an order under the section, it does not follow that every departure from that duty will taint the whole proceeding with a fatal blemish and render it void and ineffective. We find nothing in section 9 or the Act which would lead us to the conclusion that if the Government omits to consult the Panchayat concerned while taking action under sub-section (2) of section 9, the right of the Panchayat or any person would be adversely affected. There is also nothing in the Act to show that even after consultation he sense indicated by the Panchayat concerned would be binding to the Government."

It has also been observed in the said judgment that the sub-section 2 of section 9 is directory and not mandatory. Above referred to reported decision was also subsequently followed by the Division Bench of this Court in the case reported in 18 GLR 814 in the case of Naroda Nagar Panchayat vs State of Gujarat & ors. wherein it has been observed that the word 'consultation' cannot be equated with "consent" or "concurrence" In the instant case aforesaid procedure of consultation had already taken place and and therefore, it cannot be said that the Notification issued by the Development Commissioner was in any way illegal, arbitrary or malafide.

#. The learned single Judge after considering the aforesaid aspects has ultimately by a detailed and reasoned judgment has rejected the said SCA and we respectfully agree with the conclusion of the learned single Judge.

#. No other arguments were advanced on behalf the appellants in support of the appeal. Since we find no force in any of the submissions of the appellants, we dismiss this appeal with no order as to costs.

Interim relief granted earlier shall stand vacated forthwith.